

**ORDER**

DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION

2220.1

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SUBJ    LEGAL PARTICIPATION IN PROCUREMENT AND CONTRACTING

1. PURPOSE. This order sets forth FAA policy and procedures concerning the participation of agency legal counsel in the procurement and contracting process.

2. DISTRIBUTION. This order is distributed to division level in the Office of the Chief Counsel and to branch level in the Acquisition and Materiel Service; to Regional Counsels and to branch level in the Logistics Division in the regions; to Center Counsel and to branch level in the Procurement Division and the FAA Depot at the Aeronautical Center; to Center Counsel and to branch level in the Acquisition and Materiel Services Division at the FAA Technical Center.

3. CANCELLATION. FAA Order OA 2220.1, Legal Participation in Procurement and Contracting, of August 18, 1964, is canceled.

4. EXPLANATION OF CHANGES. This order updates and incorporates the statutory and regulatory changes which have taken place in procurement since the issuance of the 1964 order.

5. DEFINITIONS. As used in this order, the term "legal counsel" means:

a. For contract and procurement matters arising, or referred to, headquarters - the Assistant Chief Counsel, Procurement Legal Division, AGC-500; and

b. For contract and procurement matters arising at, or referred to, a region, or center - the responsible Regional, or Center Counsel.

6. POLICY. The procurement process has the potential for generating significant legal problems. These problems may be encountered from the time a requirement is established until contract items are accepted by the FAA. At each stage there will be choices, decisions, and actions which will have important legal consequences. Continuing cooperation and coordination are necessary between contracting and legal personnel to ensure that decisions and actions of FAA personnel do not have any adverse legal consequences for the Government. Legal counsel and procurement personnel are, therefore, directed to consult **and coordinate early and** often during the procurement process so that the FAA can avoid after-the-fact legal problems.

Distribution: A-W(GC)-2; A-W(LG)-3; A-X(GC/LG-3);  
A-Y(GC/PR/DE)-3; A-Z(GC/AD)-3

Initiated By: AGC-500 .

7. MATTERS REQUIRING CONSULTATION AND COORDINATION WITH LEGAL COUNSEL.

a. Contract Documents. Each of the following documents, including supporting materials, shall be coordinated with legal counsel:

(1) Solicitations requesting sealed bids or proposals for procurements expected to exceed \$100,000, contracts exceeding \$100,000 and all letter contracts. Regardless of the dollar threshold specified, procurement personnel are free to seek legal advice and counsel with respect to any contract document.

(2) Amendments, changes, modifications or supplements to contract documents requiring legal coordination pursuant to this order (except administrative changes which do not affect the rights or obligations of the Government or the contractor);

(3) Findings, determinations and justifications required by statute or regulation, or made in accordance with a contract provision:

(4) Documents that involve the drafting of a new contract provision or a discussion of legal principles shall be prepared in accordance with guidance provided by legal counsel;

(5) Communications with contractors, offerors, or other persons that involve matters with legal implications (e.g., interpretation or explanation of contract provisions or specifications, **or** other matters requiring legal coordination under 6 d of this order): and

(6) Correspondence with the Congress its members or staff, or with the General Accounting Office, that involves matters with legal implications; correspondence with other Government agencies on matters listed in this order as **requiring legal coordination; and correspondence on** contracts or procurements that involve matters with legal implications or involve amounts in excess of \$2,000,000 for the signature of the Secretary, Deputy Secretary, the Administrator; Deputy Administrator or Regional and Center Directors.

b. Policy Statements and Regulations. All proposed FAA policy statements, substantive regulations or orders concerning contracts or procurements, including any comments on proposed changes to the Federal Acquisition Regulation, Transportation Acquisition Regulation and DOT orders shall be coordinated with legal counsel.

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c. Negotiations and meetings. Legal counsel shall be provided the earliest possible notice of, and an opportunity to participate in, all negotiations and meetings concerning contracts or procurements where:

- (1) The other party is represented by counsel;
- (2) One of the purposes of the meeting involves a matter which has legal implications;
- (3) A member of Congress, Congressional staff member or representative of the GAO or Department of Justice will be in attendance; or
- (4) When a full negotiation team is required (See FAA Order 4400.12B, Use of a Negotiation Team).

d. Other matters. Consultation and coordination with legal counsel shall also be obtained on each of the following:

- (1) Proposed awards to other than the low bidder if there is a question of the responsiveness of the bid, responsibility of the bidder, or other matter where future controversy is anticipated;
- (2) All protests of awards or proposed awards (See FAA Order 4450.3B, Replies to Protests and Inquiries Relating to the Propriety of Award or Administration of FAA Contracts);
- (3) Alleged mistakes in bids, proposals or awards;
- (4) Matters involving labor law, State or local taxes, patents, rights in data, and copyrights;
- (5) Findings of fact and final decisions under the Disputes clause and appeals therefrom;
- (6) **Contract** claims by or **against** the Government;
- (7) Ratification of unauthorized procurement actions (See FAA Order 4405.14A, Ratification of Unauthorized Procurement Actions);
- (8) Suspected fraud or criminal violations (See FAA Order 4400.50, Government-Wide Debarment, Suspension, and Ineligibility of Contractors);
- (9) Terminations for default or convenience of the Government;

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(10) Settlements of contract claims;

(11) Remission of liquidated damages:

(12) Interpretation of, or determination of legal rights under, solicitation or contract provisions:

(13) Consideration of new contract forms or provisions, including development of standardized and specialized clauses in accordance with the Federal Acquisition Regulation;

(14) Proposed legislation and testimony for legislative hearings related to procurement or contract matters:

(15) Questions of law involving contracts or procurement: and

(16) Interagency Agreements for the acquisition of supplies or services (See FAA Order 4400.48A, Acquisition of Supplies and Services From or Through Government Agencies).

8. OTHER PROCUREMENT LEGAL SERVICES. Legal counsel should be made available and used in any other situation where a contract or procurement matter can be benefited by the involvement of a lawyer.



Donald D. Engen  
Administrator